

## BEFORE THE TENNESSEE ETHICS COMMISSION

In re: ) No. 2008-04  
)  
CLAY ENTERPRISES, )  
)  
Respondent. )

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### **ORDER ASSESSING CIVIL PENALTIES**

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This matter came on to be heard by the Tennessee Ethics Commission ("Commission") on June 24, 2008, at its regularly scheduled meeting upon Commission staff's presentation of documentation substantiating that Respondent failed timely to file a Semi-Annual Lobbying Expenditure Report which each employer of a lobbyist is required to file pursuant to Tenn. Code Ann. § 3-6-303(a).

### **FINDINGS OF FACT**

Based on the entire record in this matter, the Commission finds as follows:

1. Registration. Clay Enterprises was registered as an employer of a lobbyist for 2007. It did receive a Notice of Failure to Register on November 14, 2006 and filed shortly after receiving the Notice.

2. Semi-Annual Lobbying Expenditure Report.

A. In October 2007, Commission staff notified Clay Enterprises by electronic mail that it was required to file a Semi-Annual Lobbying Expenditure Report ("Report") for the period ending September 30, 2007, and that such Report was due to be filed by November 15, 2007.

B. As of November 15, 2007, Clay Enterprises had not filed its Report for the period ending September 30, 2007.

C. On December 5, 2007, Commission staff mailed Clay Enterprises a Notice of Failure to File Semi-Annual Lobbying Expenditure Report by first class mail.

D. Clay Enterprises did not respond to said Notice and did not file its Report.

E. Clay Enterprises timely filed its Report for the period ending March 31, 2007. At the time, it notified the Commission that it was terminating the services of its lobbyist as of May 16, 2007.

F. Clay Enterprises is in possession of the Commission's manual for lobbyists and employers of lobbyists as required by Tenn. Code Ann. § 3-6-114(c), which contains the requirement of filing Reports.

G. Clay Enterprises had sufficient notice of the requirement of filing the Report for the period ending September 30, 2007, in advance of its due date of November 15, 2007.

3. Notice of violation.

A. On March 12, 2008, Commission staff sent Clay Enterprises, by certified mail, return receipt requested, a Notice that the Commission intended to consider assessment of civil penalties against Clay Enterprises at its April 22, 2008 meeting, because of its failure to file its Report by November 15, 2007 ("Show Cause Notice")

B. The Show Cause Notice set forth the allegations, the maximum amount of civil penalties that could be assessed, the date, place, and time of the meeting, and Clay Enterprises' opportunity to participate in an informal proceeding at the meeting either by appearing personally or by submitting a sworn statement and documents.

C. The Commission received a return receipt substantiating that Clay Enterprises received the Show Cause Notice on March 14, 2008.

4. Filing of Report. The Commission received Clay Enterprises' Semi-Annual Lobbying Expenditure Report on March 31, 2008.

5. Showing of Cause. Clay Enterprises did not submit any explanation for its failure to file its Report by November 15, 2007, or in response to the Notice sent December 5, 2007, or in response to the Show Cause Notice. This matter was on the agenda at the Commission's regularly scheduled meetings on April 22, 2008, May 27, 2008 and June 24, 2008. Through its attorney, Clay Enterprises appeared at the April 22<sup>nd</sup> Commission meeting and explained that its failure to timely file was not intentional.

### **CONCLUSIONS OF LAW**

1. Clay Enterprises had a duty under Tenn. Code Ann. § 3-6-303(a) to file a Report for the six (6) month period ending September 30, 2007. This Report was due to be filed no later than November 15, 2007.

2. Under Tenn. Code Ann. § 3-6-306(a)(iii), the Commission may administratively assess a civil penalty of not more than twenty-five dollars (\$25.00) per day up to a maximum of seven hundred fifty dollars (\$750.00) if an employer of a lobbyist fails, without good cause, to timely file its Report.

3. Clay Enterprises did not show good cause why it failed to file its Report by November 15, 2007.

4. Therefore, it is appropriate for the Commission to assess a civil penalty pursuant to Tenn. Code Ann. § 3-6-303(a). The Commission would be within its authority to assess the maximum penalty of seven hundred fifty (\$750.00) dollars.

5. Clay Enterprises had received a prior late filing Notice which is an aggravating factor in assessing a penalty. Mitigating factors are that it timely notified the Commission of its termination of its lobbyist; that there was a short period of overlap in the time in had retained a lobbyist during the reporting period (April 1- September 30); and that its representative appeared at the April 22<sup>nd</sup> meeting. Therefore, the Commission finds it appropriate to assess a civil penalty of four hundred dollars (\$400.00).

6. This assessment cannot become final until after respondent has been afforded notice and an opportunity for a hearing. Tenn. Code Ann. § 3-6-107(8). Respondent's failure to participate in the informal assessment process is without prejudice to its right to a contested case hearing under the Uniform Administrative Procedures Act, Tenn. Code Ann. §§ 4-5-101—4-5-325.

### **ORDER**

It is therefore ORDERED as follows:

1. A civil penalty in the amount of four hundred dollars (\$400.00) is assessed against Clay Enterprises for failure to timely file a Semi-Annual Lobbying Expenditure Report.

2. The Executive Director shall enter this Order.

3. The Executive Director shall cause a copy of this Order to be provided to the Respondent, by either personal service, certified mail, return receipt requested, or overnight delivery.

4. Respondent shall have the right to seek reconsideration of this Order by filing with the Commission, within fourteen (14) days after the date of entry of this Order, a written Request for Reconsideration in the form set forth in the Commission's draft Rules on Administrative Sanctions.

5. Alternatively, Respondent shall have the right to initiate a contested case proceeding by filing with the Commission, within thirty (30) days after the date of entry of this Order, a Petition for a contested case hearing in the form set forth in the Commission's draft Rules on Administrative Sanctions.

6. Along with this Order, the Executive Director shall provide Respondent a copy of the Commission's draft Rules on Administrative Sanctions.

7. If Respondent does not timely file a Request for Reconsideration or a Petition for a contested case hearing, this Order shall become final and shall form the basis for legal action to

collect the civil penalty.

SO ORDERED, this 30<sup>th</sup> day of June, 2008

TENNESSEE ETHICS COMMISSION

By: \_\_\_\_\_  
Bruce A. Androphy, Executive Director